

May 16, 2005

John Keplinger, Acting Chief
Office of the Secretary of State
Political Reform Division
1500 11th Street, Room 495
Sacramento, CA 95814

Re: Your Request for Advice
Our File No. A-05-001

Dear Mr. Keplinger:

This letter is in response to your request for advice regarding the lobbying provisions of the Political Reform Act (the “Act”).¹

QUESTION

Can the Secretary of State satisfy the law’s requirement to “publish” the lobbyist directory by providing the directory on the Internet and discontinue printing the directory?

CONCLUSION

No. Nothing in the statutes, however, require that the directory, in addition to being available online, be printed in booklet form.

FACTS

Government Code section 86109 requires the Secretary of State to publish such a directory within 140 days after the commencement of each regular session of the Legislature, and for the past 30 years the Secretary of State has complied with the requirement.

¹ Government Code sections 81000 – 91014. Commission regulations appear at Title 2, sections 18109-18997, of the California Code of Regulations.

In 1999, the Legislature enacted a new provision, section 86109.5, requiring the Secretary of State to establish and maintain on the Internet an online version of the directory. The online version has been available to the public on the Secretary of State's Cal-Access web site for the past two legislative sessions, and it has been updated frequently.

It is the Secretary of State's belief that the online version of the directory meets both the spirit and the letter of both sections 86109 and 86109.5, and if the Commission concurs, would prefer to discard the printed version effective this year.

ANALYSIS

Government Code section 86109 requires the Secretary of State to publish a lobbyist directory:

“Within 140 days after the commencement of each regular session of the Legislature, the Secretary of State shall publish a directory of registered individual lobbyists, lobbying firms, and lobbyist employers. The Secretary of State shall publish, from time to time, such supplements to the directory as may be necessary.” (§ 86109.)

As a result of this law, the Secretary of State's office has for the past 30 years published a printed booklet containing the mandated information.

In the past two legislative sessions, the Secretary has published the directory online, as well as on paper, pursuant to a new statute passed in 1999:

“(a) The Secretary of State shall establish and maintain on the Internet an online version of the Directory of Lobbyist, Lobbying Firms, and Lobbying Employers. The Secretary of State shall update the directory weekly.”

“...”

(§ 86109.5, subd. (a).)

Since section 86109.5 provides for an online version, you ask whether it obviates the requirements of section 86109. As with any task involving statutory interpretation, we turn to common rules of statutory construction to determine what the statutes mean.

We examine facially the words of the statutes and must examine the context in which the language appears, adopting the construction that best harmonizes the statute both internally and with related statutes. (*State Farm Mutual Automobile Insurance Company v. Low* (2001) 92 Cal.App.4th 1169, 1178.) At first blush, then, it would appear correct to suggest that the act of providing an online lobbyist directory would

satisfy the general requirement to “publish” a lobbyist directory. A careful reading of the two *different* statutes, however, indicates otherwise.

Prior to section 86109.5’s enactment, section 86109 was the only statute requiring publication of the directory. Looking to the definition of the term “publish,” we see that that term does not mandate a printing in book form of the directory.² As a result, prior to enactment of section 86109.5, one could argue that the statute’s requirement to “publish” the directory could be satisfied by publishing the directory on the Internet.

Perhaps paradoxically so, however, the enactment of section 86109.5 makes such an interpretation no longer persuasive. By requiring in section 86109.5 the creation of a online “version” of the directory, the statutory scheme as a whole clearly contemplates that two separate and distinct versions of the directory will exist. One will be an online version (section 86109.5) and the other will be a different form (section 86109).³

While section 86109 requires some form of publication of the directory other than in an online format, section 86109 does not contain a requirement as to the number to be made available, nor how such a version is to be distributed. Thus, the Secretary may comply with the statute’s requirement if at least one version of a printed (or other non-Internet based format) copy of the directory is produced. Reading the statutes together, the provision of an online and at least one copy of another version complies with the laws’ requirement that a directory be produced.

If you have any other questions regarding this matter, please contact me at (916) 322-5660.

Sincerely,

Luisa Menchaca
General Counsel

By: C. Scott Tocher
Senior Counsel, Legal Division

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² Webster’s Third New International Dictionary defines “publish” to include the following: “to declare publicly : make generally known : disclose, circulate”; “to proclaim officially”; “to make public announcement of”; “to place before the public”, among others. (Webster’s Third New Intern’l Dict., (1993) at p. 1837.) As can be seen, there is more than one way to “publish” a given item, and doing so in written or printed form is only one option of several.

³ We note that current technology suggests the second version need not only be print form – the directory might be published on cd-rom or other electronic medium, for instance.